

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DONALD FERGUSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 1:22-cv-10542

Honorable Thomas L. Ludington
United States District Judge

**OPINION AND ORDER SUMMARILY DISMISSING § 2241 HABEAS PETITION
WITHOUT PREJUDICE AND DIRECTING CLERK TO REFILE EMERGENCY
MOTION FOR COMPASSIONATE RELEASE IN CASE NO. 76-CR-81047**

Petitioner Donald Ferguson, incarcerated at FCI Milan in Michigan, filed an emergency motion for compassionate release, which the Clerk's Office construed and filed as a petition for a writ of habeas corpus under 28 U.S.C. § 2241. ECF No. 1.

As explained hereafter, the Petition will be summarily dismissed without prejudice, and the Clerk of the Court will be directed to refile the emergency motion for compassionate release into Case No. 76-cr-81047.

I.

Petitioner is serving a seven-month sentence at FCI Milan for violating the terms of his federal parole. The violation of his federal parole was based on a state-court conviction he received after his federal conviction. The state conviction resulted in a life sentence for which Petitioner was recently paroled.

On February 28, 2022, Petitioner filed the instant petition. ECF No. 1. But the Petition does not indicate the federal offenses of which he was convicted, the district court in which he was convicted, the name of the sentencing judge, or the case number. He mentions District Judge

Denise Page Hood on the first page of his pleadings but does not suggest that she sentenced him. The Clerk's Office, however, provided this Court with a copy of an old docket sheet that shows Petitioner pleaded guilty to two counts of armed bank robbery in this District before District Judge Philip Pratt, and that he was to serve concurrent sentences of 25 years' imprisonment. *See United States v. Ferguson*, No. 76-cr-81047 (E.D. Mich. 1976).¹

Petitioner sought compassionate release from the Bureau of Prisons on the ground that he suffers from numerous health issues, but the request was denied. He filed the instant emergency motion for compassionate release, seeking immediate release from custody.

II.

The Petition must be dismissed because Petitioner cannot use a petition for a writ of habeas corpus to obtain compassionate release. *See Crowe v. United States*, 430 F. App'x 484, 484–85 (6th Cir. 2011) (unpublished) (per curiam). And a motion for compassionate release can only be brought before the sentencing judge. *Washington v. Warden Canaan USP*, 858 F. App'x 35, 36 (3d Cir. 2021) (unpublished) (per curiam); *see also Ambriz v. United States*, 465 F. Supp. 3d 630, 632 (N.D. Tex. 2020) (holding that non-sentencing district court lacked jurisdiction to entertain motion for compassionate release (citing 18 U.S.C. § 3582(c))).

For lack of jurisdiction and for improper filing, this Court will dismiss the Petition without prejudice and direct the Clerk of the Court to refile the emergency motion for compassionate release into Case No. 76-cr-81047 and assign the case to Judge Philip Pratt's successor.

¹ Public records and government documents are subject to judicial notice. *See Daniel v. Hagel*, 17 F. Supp. 3d 680, 681, n.1 (E.D. Mich. 2014); *United States ex. rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003). This Court may take judicial notice of companion criminal cases in a habeas petitioner's case. *See, e.g., United States v. Rigdon*, 459 F.2d 379, 380 (6th Cir. 1972) (per curiam).

III.

Accordingly, the Petition for a Writ of Habeas Corpus, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**.

Further, it is **ORDERED** that the Clerk of the Court is **DIRECTED** to refile the emergency motion for compassionate release into Case No. 76-cr-81047.

Further, it is **ORDERED** that the Clerk of the Court is **DIRECTED** to assigned Case No. 76-cr-81074 to Judge Philip Pratt's successor.

Dated: March 21, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge